



October 5, 1999

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR99-2814

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128720.

The Department of Transportation (the "Department") received a request for all materials relating to a traffic accident resulting in claim number B99144. You argue that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The Department must meet both prongs of this test for information to be excepted under section 552.103(a).

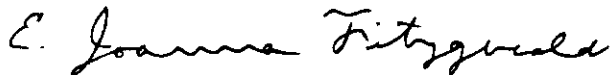
In Open Records Decision No. 638 (1996), this office stated that a governmental body may demonstrate that it reasonably anticipates litigation if it receives a notice of claim letter and represents to this office that the letter is in compliance with the requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or an applicable municipal ordinance or statute. The Department received a notice of claim from an attorney representing the wife of an individual who was killed in a motor vehicle accident that occurred in the 21900 block of IH-45. You state that the notice of claim letter meets the notice requirements of the Texas

Tort Claims Act. The notice of claim letter alleges that the Department was negligent in its maintenance of the roadway where the accident occurred. Based on these facts, we conclude that the Department reasonably anticipates litigation relating to the individual's death. The documents at issue relate to the reasonably anticipated litigation. Thus, the Department may withhold the documents from disclosure under section 552.103.

In reaching this conclusion, however, we assume that the opposing party in the anticipated litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no interest under section 552.103 exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 128720

Encl: Submitted documents

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